



U.S. Department of Justice

# MEMO ENDORSED

United States Attorney  
Southern District of New York

*The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007*

October 27, 2020

## BY ECF AND ELECTRONIC MAIL

The Honorable Lewis A. Kaplan  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: *United States v. Donald Laguardia*  
19 Cr. 893 (LAK)

Dear Judge Kaplan:

The Government writes to respectfully request an accommodation at the upcoming trial in the above-referenced case for AUSA Kobre, one of the AUSAs assigned to this case, who uses a wheelchair. As the court is aware, one of the modifications made to the courtroom because of COVID-19 is the placement of a three-sided plexiglass barrier above the lectern, and related modifications, which allow counsel to remove their masks while delivering jury addresses and examining witnesses. Due to the non-adjustable height of the lectern, however, it is inaccessible to a wheelchair user.

At Your Honor's Deputy Clerk's suggestion, AUSA Kobre contacted the District Executive's Office to request an accommodation that would allow him to deliver his jury addresses from behind a clear barrier of some sort. Such an accommodation would enable AUSA Kobre, like counsel standing at the lectern, to deliver his jury addresses without wearing a mask, which makes it difficult to be heard clearly and to convey meaning through facial expressions. This afternoon, we learned that the District Executive was considering the possibility of relocating the trial to a courtroom within the 40 Foley Square courthouse in order to provide the requested accommodation, rather than Courtroom 23B at 500 Pearl Street, which the Government understands had already been reserved for this trial.

The Government respectfully requests that the trial not be moved to 40 Foley Square, but rather be held, as planned, in Courtroom 23B at 500 Pearl Street. Aside from the substantial inconvenience to the Court if the trial were held at 40 Foley Square, the latter courthouse also poses a whole different set of accessibility issues, including a very narrow space in the well of the courtroom and tables that are too low for a wheelchair to fit under. Accordingly, the Government respectfully requests, as a first preference, an accommodation in Courtroom 23B at 500 Pearl Street that would allow AUSA Kobre to deliver his jury addresses without a mask. If such an accommodation is not possible, the Government respectfully requests permission for AUSA Kobre to deliver his jury addresses wearing a mask facing the jury from the seat at counsel's table closest

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to the jury box and at a distance at least six feet from the jury box. In either event, the Government requests that AUSA Kobre be permitted to examine witnesses, as he has in the past, from counsel's table and, of course, wearing a mask.<sup>1</sup>

The Government regrets the need to involve the Court in this matter and respectfully requests that the Court so-order this letter directing that the appropriate court personnel proceed accordingly. The Government has discussed the foregoing with defense counsel, which does not object to the requested relief.

Respectfully submitted,

AUDREY STRAUSS

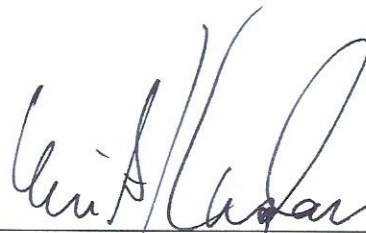
Acting United States Attorney for the  
Southern District of New York

By: \_\_\_\_\_/s/\_\_\_\_\_  
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The application is granted to the extent, and only to the extent, that (1) the trial will take place in the Moynihan Building (in courtroom 23B unless otherwise ordered), (2) AUSA Kobre may deliver his jury addresses facing the jury and question witnesses, in each case from a seat at the counsel table at a distance of at least six feet from any point in the jury box, and (3) AUSA Kobre shall wear a mask at all times.

SO ORDERED.

Dated: October 29, 2020



Lewis A. Kaplan  
United States District Judge

<sup>1</sup> The Government is less concerned with the issues posed by a mask for the examination of witness, where the focus is on the witness and which involves breaks while the witness is answering than with jury addresses, which provide an opportunity for counsel to connect and establish credibility with the jury.